

[Counsel Listed on Signature Pages]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

SHIRLEY ZELMAN, TRUSTEE, F/B/O  
SHIRLEY ZELMAN LIVING TRUST, on  
behalf of plaintiff and all others similarly  
situated,

Plaintiff,

v.

JDS UNIPHASE CORPORATION, JOZEF  
STRAUS, ANTHONY R. MULLER,  
CHARLES J. ABBE, and KEVIN  
KALKHOVEN,

Defendants.

**No. C-02-4656 CW**

**ORDER REGARDING  
CONFIDENTIALITY**

1 Disclosure and discovery activity in this action are likely to involve production of  
2 confidential, proprietary, or private information for which special protection from public  
3 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
4 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Order.

5 1. DEFINITIONS

6 1.1 Disclosure or Discovery Material: all items or information, regardless of  
7 the medium or manner generated, stored, or maintained (including, among other things,  
8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
9 responses to discovery in this matter.

10 1.2 "Confidential" Information or Items: Disclosure or Discovery Material  
11 that is non-public and that a party in good faith believes must be held confidential to protect  
12 personal privacy interests or proprietary commercial or business information, including trade  
13 secrets.

14 1.3 "Highly Confidential" Information or Items: "Confidential" Information or  
15 Items, the disclosure of which the Producing Party in good faith believes would create a  
16 substantial risk of serious injury that could not be avoided by less restrictive means.

17 1.4 Receiving Party: a party that receives Disclosure or Discovery Material  
18 from a Producing Party.

19 1.5 Producing Party: a party or non-party that produces Disclosure or  
20 Discovery Material in this action.

21 1.6 Designating Party: a party or non-party that designates information or  
22 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
23 Confidential."

24 1.7 Protected Material: any Disclosure or Discovery Material that is  
25 designated as "Confidential" or as "Highly Confidential."

26 1.8 Outside Counsel: attorneys who are not employees of a party but who are  
27 retained to represent or advise a party in this action.  
28

1.9 In-house Counsel: attorneys who are employees of a party.

1.10 Counsel (without qualifier): Outside Counsel and In-house Counsel (as well as their support staffs).

1.11 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a party or its counsel to serve as an expert witness or as a consultant in this action. No representative plaintiff or its Counsel may retain an expert witness or consultant who is (a) a past or current employee or consultant of JDS Uniphase or of one of its predecessors, (b) a past or current employee or consultant of a competitor of JDS Uniphase or of one of its predecessors, or (c) at the time of retention, anticipated to become an employee or consultant of JDS Uniphase or of a competitor of JDS Uniphase. This definition includes a professional jury or trial consultant retained in connection with this litigation.

1.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

## 2. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof (whether in written, computer or other form), plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

1           3.     DURATION

2           Even after the termination of this litigation, the confidentiality obligations imposed  
3 by this Order shall remain in effect until each Designating Party agrees otherwise in writing or a  
4 court order otherwise directs.

5           4.     DESIGNATING PROTECTED MATERIAL

6           4.1     Marking of Protected Material (Other Than Deposition Transcripts): Any  
7 party to this litigation, or non-party who produces Disclosure or Discovery Material, shall have  
8 the right to designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” any Protected  
9 Material it produces. All Protected Material shall bear a legend on each page stating that the  
10 material is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” In order to speed the process  
11 of producing large volumes of Protected Material, multi-page documents in which Protected  
12 Material is pervasive may be marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”  
13 throughout, with the understanding that portions of those documents not containing Protected  
14 Material can be de-designated through the meet-and-confer process of Paragraph 5.2. Where it is  
15 not possible to affix a legend to particular Protected Material, the Producing Party shall take  
16 reasonable steps to give all Receiving Parties notice of its status as Protected Material. Where a  
17 computer disk has been marked as Protected Material and the files on it are not individually  
18 bates-numbered or identified as Protected Material, all files contained on the disk shall be  
19 considered Protected Material.

20           Mass, indiscriminate, or routinized designations are prohibited. Designations that  
21 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
22 unnecessarily encumber or retard the case development process, or to impose unnecessary  
23 expenses and burdens on other parties), expose the Designating Party to sanctions. If it comes to  
24 a party’s or a non-party’s attention that Disclosure or Discovery Material designated as Protected  
25 Material does not qualify for protection at all, or does not qualify for the level of protection  
26 initially asserted, that party or non-party must promptly notify all other parties that it is  
27 withdrawing the mistaken designation.  
28

1                   4.2     Depositions: Deposition testimony may be classified as Protected Material  
2 at the deposition, or at any time during a review period of up to and including 30 days after  
3 receipt of the official transcript of such testimony by counsel for the party whose information has  
4 been disclosed, or in the case of non- parties or others whose information has been disclosed, up  
5 to and including 30 days after the transcript is available for review, whichever period is longer.  
6 Each deposition transcript in its entirety shall be treated as having been designated “HIGHLY  
7 CONFIDENTIAL” during the review period. Designations of Protected Material made during  
8 the deposition will be reasonably identified at the beginning of the deposition transcript when  
9 produced. Designations of Protected Material made during the review period will be made in  
10 writing served on all parties. It will be the responsibility of counsel of record to take reasonable  
11 steps to make sure that Protected Material in deposition transcripts is used only as expressly  
12 permitted in this Order. Party representative(s) attending any deposition will be temporarily  
13 excused from the deposition room at times when testimony then being designated by another  
14 party as “HIGHLY CONFIDENTIAL” is being given. Expert witnesses who have been approved  
15 in accordance with the provisions of paragraph 6.4 may attend depositions in their entirety.

16                   4.3     Contractual Obligations to Non-Parties: During the course of this action, a  
17 party may be requested to produce information that is subject to contractual or other obligations  
18 of confidentiality owed to a non-party. The party subject to the contractual or other obligation of  
19 confidentiality shall timely contact the person to whom the obligation is owed to determine  
20 whether that person is willing to permit disclosure of the confidential information under the terms  
21 of this Order. If that person is willing, the information shall be produced in accordance with this  
22 Order. If the person to whom the obligation is owed is not willing to permit disclosure of the  
23 confidential information under the terms of this Order, the party seeking the information in this  
24 litigation shall be notified, and any documents withheld on the basis of a contractual or other  
25 confidentiality obligation shall be identified on a separate index stating the reason for withholding  
26 the document and the person to whom the obligation of confidentiality is owed. This Order shall  
27  
28

1 not preclude any party from moving the Court for an order compelling production of such  
2 material.

3           4.4     Re-Designation: Inadvertent production of any Protected Material without  
4 a designation of confidentiality will not, standing alone, be deemed to waive a later claim as to its  
5 proper designation, nor will it prevent the Producing Party from designating said document or  
6 material "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at a later date. The Producing  
7 Party shall comply with Paragraph 4.1 when redesignating Disclosure or Discovery Material as  
8 Protected Material. Following any redesignation of Disclosure or Discovery Material as  
9 Protected Material (or redesignation of "CONFIDENTIAL" material as "HIGHLY  
10 CONFIDENTIAL"), the party receiving such Protected Material shall take reasonable steps to  
11 comply with the redesignation including, without limitation, retrieving all copies and excerpts of  
12 any redesignated Protected Material from persons not entitled to receive it. However, the  
13 Receiving Party shall not be obligated to remove from the public record any Disclosure or  
14 Discovery Material that had been filed with the Court as part of the public record prior to the  
15 Producing Party's redesignation of that Disclosure or Discovery Material as Protected Material.  
16 The Producing Party may move to have any such document sealed.

17           5.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

18           5.1     Timing of Challenges: A party does not waive its right to challenge a  
19 confidentiality designation merely by electing not to mount a challenge promptly after the  
20 original designation is disclosed.

21           5.2     Meet and Confer: A party that elects to initiate a challenge to a  
22 Designating Party's confidentiality designation must do so in good faith and must begin the  
23 process by conferring directly (in voice-to-voice dialogue) with counsel for the Designating Party.  
24 In conferring, the challenging party must explain the basis for its belief that the confidentiality  
25 designation was not proper and must give the Designating Party an opportunity to review the  
26 Protected Material, to reconsider the circumstances, and, if no change in designation is offered, to  
27  
28

1 explain the basis for the chosen designation. A challenging party may proceed to the next stage  
2 of the challenge process only if it has engaged in this meet-and-confer process first.

3           5.3     Judicial Intervention: A party that elects to press a challenge to a  
4 confidentiality designation after considering the justification offered by the Designating Party  
5 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
6 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
7 challenge. Each motion must be accompanied by a competent declaration that affirms that the  
8 movant has complied with the meet-and-confer requirements imposed in the preceding paragraph  
9 and that sets forth with specificity the justification for the confidentiality designation that was  
10 given by the Designating Party in the meet-and-confer dialogue.

11           The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Information classified as Protected Material shall retain its Protected Material  
13 status as well as its category of designation until such time as this Court enters an order  
14 reclassifying such material or stripping it of its Protected Material status; the time to seek review  
15 of the Court's order has expired, no appeal having been taken; or in the event review is sought, the  
16 reviewing court has completed its review and rendered a decision on the matter.

17           6.     ACCESS TO AND USE OF PROTECTED MATERIAL

18           6.1     Basic Principles: A Receiving Party may use Protected Material that is  
19 disclosed or produced by another party or by a non-party in connection with this case only for  
20 prosecuting, defending, or attempting to settle this litigation. It may not use Protected Material  
21 for any other purpose, including, without limitation, any other litigation or any business,  
22 competitive, or governmental purpose or function. Protected Material may be disclosed only to  
23 the categories of persons and under the conditions described in this Order. When the litigation  
24 has been terminated, a Receiving Party must comply with the provisions of Section 7 below,  
25 (FINAL DISPOSITION).

1 Protected material must be stored and maintained by a Receiving Party at a  
2 location and in a secure manner that ensures that access is limited to the persons authorized under  
3 this Order.

4 6.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise  
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
6 disclose any information or item designated CONFIDENTIAL only to:

7 (a) the Receiving Party's Outside Counsel of record in this action, as  
8 well as employees of said Counsel to whom it is reasonably necessary to disclose the information  
9 for this litigation and who have signed the "Agreement to Be Bound by Order" that is attached  
10 hereto as Exhibit A;

11 (b) the former and current officers, directors, and employees (including  
12 In-house Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
13 litigation and who have signed the "Agreement to Be Bound by Order" (Exhibit A);

14 (c) Experts (as defined by this Order) of the Receiving Party to whom  
15 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
16 Bound by Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional vendors to whom  
19 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
20 Bound by Order" (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure  
22 is reasonably necessary and who have signed the "Agreement to Be Bound by Order" (Exhibit  
23 A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
24 Material must be separately bound by the court reporter and may not be disclosed to anyone  
25 except as permitted under this Stipulated Order.

26 (g) the author of the document or the original source of the  
27 information.  
28



1                   6.3     Disclosure of “HIGHLY CONFIDENTIAL” Information or Items: Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
3 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

4                   (a)     the Receiving Party’s Outside Counsel of record in this action, as  
5 well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the  
6 information for this litigation and who have signed the “Agreement to Be Bound by Order” that is  
7 attached hereto as Exhibit A;

8                   (b)     Experts (as defined in this Order) (1) to whom disclosure is  
9 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by  
10 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 6.4, below, have  
11 been followed;

12                  (c)     the Court and its personnel;

13                  (d)     court reporters, their staffs, and professional vendors to whom  
14 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
15 Bound by Order” (Exhibit A); and

16                  (e)     the author of the document or the original source of the  
17 information.

18                   6.4     Procedure for Disclosure of “HIGHLY CONFIDENTIAL” Information or  
19 Items to “Experts”: Unless otherwise ordered by the Court or agreed in writing by the  
20 Designating Party, a party that seeks to disclose to an “Expert” (as defined in this Order) any  
21 information or item that has been designated “HIGHLY CONFIDENTIAL” first must (1) identify  
22 in writing to the Designating Party the specific HIGHLY CONFIDENTIAL information that the  
23 Receiving Party seeks to disclose to the Expert; (2) receive a written representation from its  
24 Expert that the Expert is not currently affiliated, and has never been affiliated, with any  
25 competitor of Defendant JDS Uniphase; and (3) inform the Designating Party that the Expert has  
26 provided the written representation to counsel for the Receiving Party.

6.5 Protected Material Subpoenaed or Ordered Produced in Other Litigation:

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a copy of this Stipulated Order promptly to the party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its CONFIDENTIAL MATERIAL, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

6.6 Unauthorized Disclosure of Protected Material: If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1                   6.7     Using Protected Material in Court: Without written permission from the  
2 Designating Party or a court order secured after appropriate notice to all interested persons, a  
3 party may not file in the public record in this action any Protected Material. A party that seeks to  
4 file under seal any Protected Material must comply with Civil Local Rule 79-5.

5                   In the event that Protected Material is to be offered into evidence in any public  
6 hearing or proceeding, including trial, the offering party shall so notify the Court and the Court  
7 shall then consider what steps, if any, should be taken to protect the information.

8                   6.8     Own Use: Nothing contained herein shall prevent any Designating Party  
9 from disclosing its own Protected Material to any person as it deems appropriate.

10                 7.     FINAL DISPOSITION

11                 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
12 after the final termination of this action, each Receiving Party must return all Protected Material  
13 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
14 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
15 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
16 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
17 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
18 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day  
19 deadline that identifies (by category, where appropriate) all the Protected Material that was  
20 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
21 abstracts, compilations, summaries, or other forms of reproducing or capturing any of the  
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain one archival  
23 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney  
24 work product, even if such materials contain Protected Material. Any such archival copies that  
25 contain or constitute Protected Material remain subject to this Order as set forth in Section 3  
26 (DURATION), above.

1           8.     RIGHT TO FURTHER RELIEF

2           Nothing in this Order abridges the right of any person to seek its modification by the  
3 Court in the future.

4           9.     RIGHT TO ASSERT OTHER OBJECTIONS

5           By stipulating to the entry of this Order, no party waives any right it otherwise would have  
6 to object to disclosing or producing any information or item on any ground not addressed in this  
7 Order. Similarly, no party waives any right to object on any ground to use in evidence of any of  
8 the material covered by this Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: February 3, 2006

3 JORDAN ETH  
4 TERRI GARLAND  
5 PHILIP T. BESIROF  
6 RAYMOND M. HASU  
7 MORRISON & FOERSTER LLP  
8 425 Market Street  
9 San Francisco, CA 94105-2482  
10 Telephone: (415) 268-7000  
11 Facsimile: (415) 268-7522

12 By: /s/ Terri Garland  
13 Terri Garland  
14 Attorneys for Defendants  
15 JDS Uniphase Corporation,  
16 Charles J. Abbe, Jozef Straus, and Anthony  
17 Muller

18 Dated: February 3, 2006

19 MICHAEL J. SHEPARD  
20 HOWARD S. CARO  
21 HELLER EHRMAN LLP  
22 333 Bush Street  
23 San Francisco, CA 94104-2878  
24 Telephone: (415) 772-6000  
25 Facsimile: (415) 772-6268

26 MICHAEL L. CHARLSON  
27 J. CHRISTOPHER MITCHELL  
28 HELLER EHRMAN LLP  
29 275 Middlefield Road  
30 Menlo Park, CA 94025-3506  
31 Telephone: (650) 324-7000  
32 Facsimile: (650) 324-0638

33 By: /s/ Howard S. Caro  
34 Howard S. Caro  
35 Attorneys for Defendant  
36 Kevin Kalkhoven

1  
2 Dated: January 25, 2006

3 JEFFREY H. SQUIRE  
4 IRA M. PRESS  
5 MARK A. STRAUSS  
6 KIRBY McINERNEY & SQUIRE, LLP  
7 830 Third Avenue, 10th Floor  
8 New York, NY 10022  
9 Telephone: (212) 371-6600  
10 Facsimile: (212) 751-2540

11 -and-

12 LIONEL GLANCY  
13 SUSAN G. KUPFER  
14 GLANCY, BINKOW & GOLDBERG, LLP  
15 455 Market Street, Suite 1810  
16 San Francisco, CA 94105  
17 Telephone: (415) 972-8160  
18 Facsimile: (415) 972-8166

19 PETER A. BINKOW  
20 GLANCY, BINKOW & GOLDBERG, LLP  
21 1801 Avenue of the Stars, Suite 311  
22 Los Angeles, CA 90067  
23 Telephone: (310) 201-9150  
24 Facsimile: (310) 201-9160

25 By: /s/ Ira M. Press  
26 Ira M. Press  
27 Attorneys for Plaintiffs  
28

21 PURSUANT TO STIPULATION, IT IS SO ORDERED; **but see Local Rule 79-5.**

22 Dated: 2/7/06

23 /s/ CLAUDIA WILKEN

24  
25 HONORABLE CLAUDIA WILKEN  
26 United States District Judge  
27  
28

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY ORDER**

I, \_\_\_\_\_, [print or type full name],  
 of \_\_\_\_\_ [print or type full address], declare  
 under penalty of perjury that I have read in its entirety and understand the Order Regarding  
 Confidentiality that was issued by the United States District Court for the Northern District of  
 California on \_\_\_\_\_ in the case of *Zelman v. JDS Uniphase Corporation*, No. C-02-4656 CW.  
 I agree to comply with and to be bound by all the terms of this Order Regarding Confidentiality  
 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
 any information or item that is subject to this Order Regarding Confidentiality to any person or  
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Order Regarding  
 Confidentiality, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full  
 address and telephone number] as my California agent for service of process in connection with  
 this action or any proceedings related to enforcement of this Order Regarding Confidentiality.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

1 I, Raymond M. Hasu, am the ECF User whose ID and password are being used to file this  
2 Stipulation and [Proposed] Order Regarding Confidentiality. In compliance with General Order  
3 45, X.B., I hereby attest that Ira Press, attorney for Plaintiffs, and Howard S. Caro, attorney for  
4 Defendant Kevin Kalkhoven, have concurred in this filing.  
5

6  
7 Dated: February 3, 2006

MORRISON & FOERSTER LLP

8  
9 By: /s/ Raymond M. Hasu  
10 Raymond M. Hasu  
11 Attorneys for Defendants  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28